IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD

HON'BLE Mr. JUSTICE R. SUBHASH REDDY

Writ Petition No.8414 of 2007

Dated: September 11, 2007

Between:

Y. Bhagyalakshmi, D/o. Sri Y. Rajendra Prasad,
Aged 26 years, R/o.H.No.2-2-1105/22, 1st Floor,
Tilaknagar, OPP: Tilaknagar Hospital Lane,
Hyderabad.

… Petitioner

And

Dr. N.T.R. University of Health Sciences,
Andhra Pradesh, Vijayawada, represented
By its Registrar, and three others.

… Respondents

Order:

Petitioner, an applicant for Postgraduate course in Medicine in the first respondent, Dr. N.T.R. University of Health Sciences, has filed this writ petition questioning the proceedings of the Director of Tribal Welfare dated 17-04-2007 issued in Rc.No.956/2007/TR1/VC-1, whereby provisional clearance was given in favour of the fourth

respondent on her claim that she belongs to Scheduled Tribe category, for the purpose of admission into Postgraduate course in Medicine.

2. Petitioner and the fourth respondent herein, who have completed their M.B.B.S. course, appeared for Postgraduate Medical entrance test for the academic year 2007-08. Petitioner, who claims to be local candidate of Osmania University local area, secured 838th rank in the entrance test, whereas fourth respondent, a candidate from S.V. University local area, secured 338th rank. Both of them claimed seats in the quota reserved for Scheduled Tribe candidates under Women category. Fourth respondent claimed a seat under the said category on the basis of a certificate issued to that effect by the competent authority. As fourth respondent was a better rank-holder than the petitioner in the said category, she was granted admission in M.D. (General Medicine) in Osmania Medical College, and the petitioner was granted admission in Diploma in Child Health in Kurnool Medical College.

3. The grievance of the petitioner is that as much as fourth respondent is an offspring of an inter-caste marriage between her father, an S.C. (Mala), and her mother, who belongs to Yanadi community, a notified Scheduled Tribe, her admission into the said course under the reserved category is illegal.

4. When the admission process was going on, basing on the ranks secured in the common entrance test, as there was a doubt with regard to the claim of the fourth respondent that she belongs to S.T. community, Registrar of N.T.R. University of Health Sciences sent a fax message dated 26-03-2007 to the Director of Tribal Welfare,

seeking clarification. The Director of Tribal Welfare based on the information furnished by the fourth respondent and also with reference to the findings in the enquiry during her admission into M.B.B.S. course during the academic year 1996-97, by the impugned proceedings, gave provisional clearance on her Scheduled Tribe Status and sought further clarification from the Government.

5. In the affidavit filed in support of the writ petition, it is stated that the father of the petitioner made representations dated 07-04-2007 and 09-04-2007 to the Commissioner, Tribal Welfare to conduct enquiry on the claim of the fourth respondent.

6. Counter affidavit has been filed by the second respondent, Director of Tribal Welfare, and Paragraph-2 of the said counter affidavit reads as follows:

> " Kum. Nosina Sireesha, D/o. N. Penchalaiah (Merit Rank No.338) is an applicant for admission into P.G. Medical course during the year 2007-08 under Scheduled Tribe quota. At the time of counseling for admission into P.G. Medical course a doubt has been raised about her Scheduled Tribe status claim since the surname 'Nosina' of the 4th respondent is uncommon among the Yanadi tribe and also as she is said to be an offspring of non-tribal father (SC-Mala) and mother said to be a tribal. Hence 4th respondent was issued with a memo in Rc.No.956/2007/TRI/VC-1, dt: 04-04-2007 advising her to see the Director, Tribal Cultural Research and Training Institute, on 7-4-2007 at 10-30 A.M. along with parents or an elderly member of her family (if parents are not alive) who has full knowledge about her community to furnish oral and documentary evidences to substantiate their Scheduled Tribe status claim (R-2/1). Accordingly, the 4th respondent along with her parents appeared and furnished information and also documentary evidences in support of her Scheduled Tribe status claim."

7. In the counter affidavit filed by the second respondent, it is also stated that fourth respondent was an applicant for admission into M.B.B.S. course during the academic year 1996-97 and when her Scheduled Tribe status was felt doubtful, the discreet enquiries conducted at that time revealed that she is the daughter of Smt. Yellampalli Krishnakumari, who is the daughter of one late Sri Yellampalli Penchalaiah who was elected as Member of Legislative Assembly from Scheduled Tribe reserved constituency from Kavali in Nellore District. It is further stated that the father of the fourth respondent, who belongs to Scheduled Caste, and her mother, who belongs to Scheduled Tribe, got married without the consent of their parents. It is also stated that the father of the fourth respondent had cut off his relationship with his blood relatives and has been living with his wife and developed intimate contacts with Yanadi community. It is further stated that the families of Yanadis have been treating them as members of Yanadi community and they are also participating in the social and religious functions of theirs.

8. The impugned proceedings have been issued by the second respondent, giving provisional clearance to the fourth respondent, referring to the enquiry findings conducted during the year 1996 and also reiterating that enquiries conducted in this regard proved that fourth respondent was born and brought up in the surroundings of Yanadi community and was being accepted by the Yanadi people.

9. Fourth respondent has filed a separate counter affidavit stating that she was granted admission in M.D. (General Medicine) as a non-local candidate under Scheduled Tribe category and the petitioner was granted admission as a local candidate of Osmania University local area. It is stated that her social status as S.T. was verified at the

time of issuance of community certificate. It is further stated that as the community certificate issued by the competent authority is valid, she is entitled to claim admission under the quota reserved for S.T. candidates. It is also stated that she was born and brought up in her maternal grandmother's house at Nellore and she had education at that place. It is further stated that she was brought up in the environment where all her relatives lived and she was treated one amongst them and she also suffered disability as an S.T. in the society. It is further stated that enquires were conducted with regard to her social status and only thereafter, she was granted admission in M.D (General Medicine) on
20-04-2007 and classes have commenced from 02-05-2007. She, thus, prayed for dismissal of the writ petition.

10. Learned counsel for the petitioner, Sri G. Vidyasagar, submits that the fourth respondent is the offspring of an inter-caste couple, and as admittedly her father is an S.C and mother is an S.T., she cannot claim the status of an S.T. In support of his submission, he placed reliance on the judgments of the Hon'ble Supreme Court in **Punit Rai V. Dinesh Chaudhary**[1] and **Anjan Kumar V. Union of India**[2].

11. On the other hand, learned Government Pleader appearing for the second respondent and Sri A. Rajashekar Reddy, learned counsel appearing for the fourth respondent submit that though the father of the fourth respondent belongs to Scheduled Caste, however, she was born and brought up in the Yanadi community, and also suffered the social stigma like her mother, who belongs to Scheduled Tribe community. They further submit that even while issuing community certificate and also during the admission of the petitioner into MBBS course during the year 1996, discreet enquires were conducted and

based on the same, she was granted admission into MBBS course; however, further objection is sought to be raised without any basis. They also rely on the very same judgments of the Hon'ble Supreme Court relied on by the learned counsel for the petitioner and state that, for claiming social status, one has to satisfy the constitutional requirements and must suffer the disability of an S.T. They submit that in this case, as the said criteria are satisfied, it is not a fit case where the admission granted to the fourth respondent in Postgraduate Medical course can be disapproved.

12. A copy of the certificate issued by the competent authority has been filed in the material papers filed by the fourth respondent. In the case of *Puneeth Rai*, the Hon'ble Supreme Court, examining the effect of a circular issued by the State Government, has held that circular instructions issued are in the nature of administrative instructions and cannot supersede the customary Hindu law. In the said judgment, it was further held that a person would inherit his caste from his father. But, at the same time, in the very same judgment, it was also held that determining the caste or tribe of a person depends on several factors, including customary laws. It was further held that if a person is to be considered to be a member of a Scheduled Caste or a Scheduled Tribe, he should have been accepted by the community concerned and the question as to whether a person belongs to a particular caste or not has to be determined by the statutory authorities specified therefor. In the case of *Anjan Kumar*, the Hon'ble Supreme Court has held that the condition precedent for granting Tribe certificate is that one must suffer disability wherefrom one belongs.

13. From the aforesaid judgments, it is clear that, to extend the benefit of a Tribe, the primary and paramount consideration would be

to examine whether the candidate claiming such status has suffered disability of that particular community. In the case on hand, it is not in dispute that fourth respondent is the offspring of an inter-caste couple. The specific stand of the fourth respondent is that she was born and brought up in the Scheduled Tribe community. Even from the counter affidavit filed by the Director of Tribal Welfare, the second respondent herein, it is clear that during admission of the fourth respondent to MBBS course during 1996 itself, a doubt had arisen about her caste status and she was directed to appear before the Director to substantiate her claim. It is also averred in the counter affidavit that discreet enquiries conducted during the year 1996 revealed that the father of the fourth respondent has left his blood relations and has been living with his wife, i.e. the mother of the fourth respondent, who belongs to Yanadi community, developed intimate contacts and has also been participating in the religious functions of Yanadi Community. Further, in the judgments referred above, the Hon'ble Supreme Court held that the claim of community status is a matter of enquiry by the statutory authority. In the case on hand, the caste certificate issued to the fourth respondent by the competent authority is still in force. In that view of the matter, I do not find any valid ground to grant the relief sought by the petitioner.

14. The writ petition is accordingly dismissed. No order as to costs.

_____

JUSTICE R. SUBHASH REDDY.

September 11, 2007
MRR

[1] (2003) 8 SCC 204

[2] (2006) 3 SCC 257